

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Crim. No. 14-194 (JRT)

Plaintiff,

**MEMORANDUM OPINION
AND ORDER**

v.

STEPHEN PATRICK GRISHAM,

Defendant.

Stephen Patrick Grisham, Prisoner # 18066-041, FPC-Duluth, P.O. Box 1000, Duluth, MN 55814, *pro se*.

Clifford B. Wardlaw, Assistant United States Attorney, **UNITED STATES ATTORNEY'S OFFICE**, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415, for respondent.

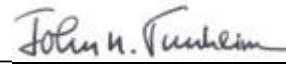
Defendant Stephen Patrick Grisham is currently serving a twelve-month and one-day prison sentence after pleading guilty to Misappropriation by a Fiduciary, in violation of 38 U.S.C. § 6101. Grisham now moves the Court for an order granting him immediate release from custody based on the Bureau of Prisons' ("BOP") alleged failure to timely respond to his administrative appeal regarding the timing of his pre-release into a Residential Reentry Center ("RRC"). (Pet.'s Mot. for Immediate Release, Apr. 15, 2016, Docket No. 25; Pet.'s Am. Mot. for Immediate Release, May 12, 2016, Docket No. 30.) The Court will deny Grisham's motions for two reasons. First, even if the BOP in fact failed to timely respond to Grisham's administrative appeal, that failure is not grounds for his immediate release from custody. Instead, when the BOP fails to timely respond to an

inmate's appeal, the inmate may treat that failure as a "denial" of the appeal "at that level." 28 C.F.R. § 542.18. Thus, BOP's purported failure to respond gave Grisham the right to pursue his appeal at the next level in the administrative chain, not to be immediately released from custody. Second, to the extent Grisham is challenging the correctness of the BOP's determination regarding the timing of his RRC placement, that issue is now moot because Grisham was transferred to RRC placement on June 2, 2016. (See Decl. of Kyja Winger ¶ 9, June 21, 2016, Docket No. 37; Pet.'s Mem. in Supp. of Mot. for Immediate Release at 1, Apr. 15, 2016, Docket No. 26); *Miller v. Whitehead*, 527 F.3d 752, 756 (8th Cir. 2008) (holding that inmates' petitions challenging the timing of their RRC placements were moot because they were transferred to RRC placements after they filed their petitions). The Court will accordingly deny Grisham's motions.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Grisham's Motion for Immediate Release from Custody [Docket No. 25] and Amended Motion for Immediate Release from Custody [Docket No. 30] are **DENIED**.

DATED: July 7, 2016
at Minneapolis, Minnesota.



JOHN R. TUNHEIM
Chief Judge
United States District Court